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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO.       |
|---|-------------|----------------------|-------------------------------|------------------------|
| 10/635,116  | 08/06/2003  | John G. Waclawsky    | 1004-063.001                  | 2068                   |
| 47654 7590 01/08/2008<br>BAINWOOD HUANG & ASSOCIATES LLC<br>2 CONNECTOR ROAD<br>WESTBOROUGH, MA 01581 |             |                      | EXAMINER<br>NGO, NGUYEN HOANG |                        |
|   |             |                      | ART UNIT<br>2616              | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>01/08/2008       | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/635,116

Applicant(s)

WACLAWSKY ET AL.

Examiner

Nguyen Ngo

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 34-66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-37 and 46-49, 56-59 is/are rejected.
- 7) ☐ Claim(s) 38-45 and 50-55, 60-66 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Response to Amendment***

This communication is in response to the amendment of 12/12/2007. All changes made to the Claims have been entered. Accordingly, Claims 34-66 are currently pending in the application.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 34, 37, 46, 49, 56, 59, is rejected under 35 U.S.C. 102(e) as being anticipated by Meurisse et al. (US 5959973), hereinafter referred to as Meurisse.

**Regarding claim 34, 46, 56,** Meurisse discloses a method for managing a flow of packets, comprising (a method to control data flow rate of data transmitted over a connection set up between a source terminal and a destination terminal via a plurality of network links and network nodes at least one of which constitutes a queuing network node which is able to return data flow control packets to the source terminal, the data flow control packets containing information based on which the data flow rate is to be controlled in the source terminal, col1 lines 5-16);

transferring packets of a particular packet flow based on an initial policy scheme (actual packet rate for each one of said connections passing through said queuing network node, col2 lines 20-35);

planning a scheme change to change the initial policy scheme (first data rate from source) to a new policy scheme based on transfer conditions within the data communications device existing while transferring the packets of the particular flow based on the initial policy scheme (calculate an upper packet rate value proportional to said actual packet rate and having a flow control packet to be returned to said source terminal, col2 lines 35-41); and

providing a change signal to a source of the particular packet flow, the change signal indicating that the data communications device has planned the scheme change (the source can increase its transmit rate or decrease their transmit rates, col3 lines 10-16 and abstract)

wherein the data communications device is a first computerized node of a network (queuing network node q of figure 1), the source of the particular packet flow is a second computerized node (source terminals 21-24 of figure 1) of the network coupled to the first computerized node by a packet transmission medium (network links, col1 lines 5-16), and providing the change signal comprises transmitting a change signal

packet into the network destined for the second computerized node (feedback rate control signal, col1 lines 5-36).

**Regarding claim 37, 49, 59,** Meurisee discloses the method of claim 34 wherein the initial policy scheme is an initial packet classification scheme for classifying packets of the particular packet flow, and wherein the new policy scheme is a new packet classification scheme for classifying packets of the particular packet flow in a manner that is different than that of the initial packet classification scheme (connections are classified, col7 lines 15-41).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 35, 36, 47, 48, 57, 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meurisse et al. (US 5959973), in view of Karol et al. (US 5675573), hereinafter referred to as Meurisse and Karol.

**Regarding claim 35, 36, 47, 48, 57, 58,** Meurisse fails to specifically disclose having the initial policy scheme be an initial packet dropping/scheduling scheme and wherein the new policy scheme is a new packet dropping/scheduling scheme. Meurisse however discloses of a queuing node that performs the role of a queuing point for bursty traffic that is rather delay insensitive (col1 lines 25-35 and col8 lines 18-46). Karol further discloses the need to have packet dropping schemes to meet QoS requirements and to route traffic based on the associated requirements and that scheduling schemes are used in order to minimize excessive transport delays in order to reduce losses of packets and to minimize degradation in service quality (col1 lines 35-50). It would have thus been obvious to a person skilled in the art to incorporate the concept of using packet dropping/scheduling schemes for a policy scheme for transferring packets as disclosed by Karol into the method to control data flow from a source to a destination with use of a feedback signal as disclosed by Meurisse in order to correctly and efficiently transmit data with minimal degradation in service quality.

### ***Response to Arguments***

6. Applicant's arguments with respect to claim 34-66 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

7. Claims 38-45, 50-55, 60-66 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. a) Cole et al. (US 6246754), Mechanism For Changing A Modem's Connection Rate Within a Family Of Interoperable Modems.

10. b) Prasad (US 6381216), Simplified Switch Algorithm For Flow Control Of Available Bit Rate ATM Communications).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Ngo whose telephone number is (571)272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on (571)272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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